

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM K. HOWELL, HEIDI
HOWELL,

Plaintiffs,

v.

THE GRADALL COMPANY, et al.,

Defendants.

CASE NO. C13-742 RAJ

ORDER

This matter comes before the court on defendants' motion to transfer venue.¹ Dkt. # 10.

The district court has discretion to adjudicate motions to transfer according to an individualized case-by-case consideration of convenience and fairness under 28 U.S.C. § 1404(b). *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Section 1404(a) requires that (1) the district to which defendant seeks to have the action transferred is one in which the action might have been brought, and (2) the transfer be for the convenience of the parties and witnesses and in the interest of justice. 28 U.S.C. § 1404(a). Plaintiffs do not dispute that this case could have been brought in the Eastern

¹ This motion may be decided on the papers submitted. Accordingly, the plaintiffs' request for oral argument is DENIED.

1 District of Washington. Rather, they argue that the interests of the parties, witnesses and
2 justice do not favor transfer.

3 In determining whether the interests of the parties, witnesses and justice favors
4 transfer, courts must weigh multiple factors in its determination whether transfer is
5 appropriate in a particular case. *Jones*, 211 F.3d at 498. The court may consider the
6 eight private and public interest factors: (1) the location where the relevant agreements
7 were negotiated and executed; (2) the state that is most familiar with the governing law;
8 (3) the plaintiff's choice of forum; (4) the respective parties' contacts with the forum; (5)
9 the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the
10 differences in the costs of litigation in the two forums; (7) the availability of compulsory
11 process to compel attendance; and (8) the ease of access to sources of proof. *Id.* at 498-
12 99. The court may also consider court congestion, pendency of related litigation in the
13 transferee forum and the public's interest in adjudicating the controversy in the chosen
14 forum. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir.
15 1986). "Because these factors cannot be mechanically applied to all types of cases, they
16 shall be considered here under the statutory requirements of convenience of witnesses,
17 convenience of parties, and the interests of justice." *Amazon.com v. Cendant Corp.*, 404
18 F. Supp. 2d 1256, 1259 (W.D. Wash. 2005).

19 **A. Convenience of the Parties**

20 A plaintiff's choice of forum is entitled to greater deference when a plaintiff
21 chooses his home forum. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56 (1981).
22 "Where plaintiffs have virtually no interest in the forum, however, the balance of
23 interests is more easily tipped in favor of a transfer." *Blackmun v. Park W. Galleries,*
24 *Inc.*, Case No. 08-1310 RSL, 2009 WL 1174639, *3 (W.D. Wash. 2009).

1 Here, none of the parties reside in the Western District of Washington.² None of
 2 the events giving rise to plaintiffs' claims occurred here. Plaintiffs do not dispute that
 3 they reside in the Eastern District of Washington or that all of the events giving rise to
 4 plaintiffs' claims occurred in the Eastern District of Washington. Although Mr. Howell
 5 indicates that he has family in the Seattle area and that his preference is that this case be
 6 tried in Seattle (Dkt. # 20 (Howell Decl.)), this District's interest in the parties or the
 7 subject matter is extremely attenuated.³

8 This factor favors transfer.

9 **B. Convenience of the Witnesses**

10 The relative convenience of the witnesses is often recognized as the most
 11 important factor to be considered in ruling on a section 1404 motion. *Data Retrieval*
 12 *Tech, LLC v. Sybase, Inc.*, Case No. C08-1702 RSM, 2009 WL 960681, *4 (W.D. Wash.
 13 2009). When considering the convenience of the witnesses, the convenience of non-party
 14 witnesses is the more important factor. *Amazon.com*, 404 F. Supp. 2d at 1260. The court
 15 should consider how many witnesses each side may have and the relative importance of
 16 their testimony. *Id.*; see *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1335-36 (9th Cir.
 17 1984) (noting that the court should have "examined the materiality and importance of the
 18 anticipated witnesses' testimony and then determined their accessibility and convenience
 19 to the forum."). Additionally, the court may consider, "the availability of compulsory
 20 process to compel attendance of unwilling non-party witnesses." See *Jones*, 211 F.3d at
 21 499.

22 Here, none of the potential witnesses identified reside in the Western District of
 23 Washington. In their initial disclosures, plaintiffs identify 50 individuals they believed
 24 _____

25 ² Defendants appear to reside in Ohio.

26 ³ Although defendants apparently sell products in this District, there is no evidence that
 27 the subject excavator was ever in the Western District of Washington, or that any of the design or
 manufacturing occurred in this District.

1 likely had discoverable information pursuant to Rule 26(a)(1)(A)(i). Dkt. # 12-1 at 2-7
2 (Ex. A to Russell Decl.). Plaintiffs intend to testify. Although plaintiffs reside in the
3 Eastern District of Washington, Mr. Howell has indicated that he would not be
4 inconvenienced if he had to travel to Seattle. Of the 46 non-party individuals, plaintiffs
5 have indicated that they intend to call “one or two of Mr. Howell’s treating physicians[,]”
6 but that they will likely provide such testimony through videotaped testimony.” Dkt. #
7 19 at 6 (Opp’n). Plaintiffs also seem to indicate that they intend on calling longtime
8 friends of plaintiffs to testify regarding their observations and contact with plaintiffs
9 before and after the injury. *Id.* at 6. However, plaintiffs do not indicate the scope of
10 testimony or how many of those nine identified friends they intend to call. All of these
11 friends reside in the Eastern District of Washington, although two have provided
12 declarations that traveling to Seattle would not be an inconvenience. The only other
13 third-party testimony that plaintiffs indicate they intend to call as witnesses are three
14 expert witnesses who do not reside in Washington. These expert witnesses have
15 submitted declarations indicating that it would be more convenient to travel to Seattle as
16 opposed to Spokane.

17 Defendants have indicated that they will call a number of witnesses who arrived
18 after the accident who will testify about Mr. Howell’s body position, as well as the
19 investigator, but defendants have not indicated how many of these eight employees they
20 will call. The court recognizes that this case is still in its early stages. Regardless, all of
21 these witnesses reside in the Eastern District of Washington. Defendants concede that
22 they do not know the exact details of each of the damages issue that will be in dispute at
23 trial, but indicate that they anticipate calling Mr. Howell’s treating physicians and other
24 care providers at trial. All of these witnesses reside in the Eastern District of
25 Washington.

26 Neither party has addressed whether any of the potential non-party witnesses are
27 within the subpoena power of the court, in case those witnesses do not agree to

1 voluntarily appear.⁴ However, subpoenas for compelled testimony may be quashed when
 2 the non-party witness would be required to travel more than 100 miles from where that
 3 person resides, is employed or regularly transacts business. *See* Fed. R. Civ. Proc.
 4 45(c)(3)(A)(ii). The Western District of Washington Courthouse is more than 100 miles
 5 from all of the addresses provided for every potential third-party witness.

6 Given the fact that none of the potential witnesses reside in the Western District of
 7 Washington, and all of the non-party witnesses are outside this court's reach for
 8 compulsory process, the court finds that this factor weighs in favor of transfer.

9 **C. Interest of Justice**

10 The interest of justice factor is perhaps the most important. *Amazon.com*, 404 F.
 11 Supp. 2d at 1261. In considering the interest of justice, the court weighs such factors as
 12 ensuring speedy trials, trying related litigation together, and having a judge who is
 13 familiar with the applicable law try the case. *Id.*

14 The parties refer the court to the 2012 Federal Court Management Statistics. Dkt.
 15 # 12-1 at 53-56 (Exs. F & G to Russel Decl.). Plaintiffs argue that this District appears to
 16 progress to resolution faster than in the Eastern District of Washington. However, the
 17 statistics as to the speedier disposition or speedier trial offered in this District are illusory
 18 because the statistics do not reflect this court's significant case load. Additionally, both
 19 districts can equally apply the applicable law and decide this case. Accordingly these
 20 factors are neutral.

21 Finally, while this District has some interest in the subject matter of this lawsuit
 22 since defendants sell products here, the Eastern District of Washington has a much
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24 ⁴ Although the attorney for East Columbia Basin Irrigation District ("ECBID") has
 25 indicated that ECBID will cooperate with the parties to make employees available for trial,
 26 cooperation is premised on the condition that "the request does not substantially interfere with
 27 the operation of [ECBID] and *any necessary travel and lodging are paid by the requesting*
party." Dkt. # 21 (Lemargie Decl.) ¶ 3 (emphasis added). This representation seems to indicate
 that if travel and lodging are not paid, compulsory process would be necessary.

1 greater interest in resolving this dispute given that plaintiffs reside there, the vast majority
2 of potential witnesses reside there, the subject excavator was located there, the accident
3 occurred there, and Mr. Howell obtained treatment from physicians and other health care
4 providers after the accident through present day there. Accordingly, this factor tips in
5 favor of transfer.

6 **D. Balance of Factors**

7 The court finds that on balance, defendants have met their burden of showing that
8 the convenience of the parties, the convenience of the witnesses, and the interests of
9 justice favor transfer to the Eastern District of Washington. 28 U.S.C. § 1404.

10 **E. Conclusion**

11 For all the foregoing reasons, the court GRANTS defendants' motion to transfer
12 venue. Dkt. # 10. The Clerk is DIRECTED to transfer this case to the United States
13 District Court, Eastern District of Washington.

14 Dated this 19th day of September, 2013.

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17 The Honorable Richard A. Jones
18 United States District Judge
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